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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Interconnection and Resale Obligations
Pertaining to
Commercial Mobile Radio Services

CC Docket No. 94-54

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REPLY COMMENTS

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SUMMARY

Nextel Communications, Inc. ("Nextel") is filing Reply Comments herein to establish that mandatory resale obligations are not in the public interest for Specialized Mobile Radio ("SMR") operators as part of the Commercial Mobile Radio Services ("CMRS") marketplace. Initially imposed to fill a void of competition in markets consisting of few -- if not just one -- providers, resale obligations helped to create competition where it otherwise may not have existed. Imposing these obligations on competitive SMR operators is nothing more than an attempt to rubber-stamp the regulations of the cellular industry onto the emerging CMRS industry without the underlying justifications.

The Commission should recognize that the technical and operational characteristics of SMR systems make mandatory resale unreasonable and technically infeasible. SMR operators are assigned limited, non-contiguous spectrum which requires careful planning and hands-on control over system operations, particularly the addition and deletion of mobile units; SMR equipment is not governed by any industry standard to ensure compatibility from system to system; and the technical inability of many SMR operators to track individual units on the system -- whether due to the lack of a unit identification number or the lack of airtime billing -- increases the likelihood for fraud by resellers.

Additionally, Nextel must manage the addition of new customers to the digital system, while migrating existing customers from the analog system. Because wide-area SMR licensing results in licensees having a different number of channels at each site,

capacity on the Nextel system can vary significantly from site to site, thus requiring that Nextel closely monitor and manage the addition and migration of customers on its system. All of these factors differentiate SMR systems from those systems currently obligated to provide resale and makes mandatory resale technically infeasible, uneconomic and counterproductive to developing robust facilities-based competition among CMRS services.

Switch-based resale also should not be mandated on the CMRS industry. Nextel fully supports the Commission's tentative conclusion on this issue because switch-based resale only provides an opportunity for parties to not participate in the Commission's auctions, avoid the requisite significant infrastructure investment, and then offer services on the system of another party who was willing to make those investments and take the entrepreneurial risks.

The Commission also correctly analyzed CMRS-to-CMRS interconnection and roaming requirements. At this time in the CMRS industry, it is not possible to determine how the industry will be structured, what technologies will be employed by all of the players, and which of the potential competitors will actually survive and become players. Without the ability to make those determinations, the Commission should not impose any specific mandate with regard to CMRS-to-CMRS interconnection or roaming. To do so could jeopardize the rapid deployment of new, enhanced services to the public.

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REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. INTRODUCTION

Pursuant to Rule 1.415 of the Rules of the Federal Communications Commission ("Commission"), Nextel Communications, Inc. ("Nextel") hereby files these Reply Comments in the above-referenced proceeding. Nextel and more than 40 other parties filed comments herein on June 14, 1995 in response to the Commission's Second Notice of Proposed Rule Making ("NPRM").^{1/}

Nextel files these Reply Comments for the following purposes: (1) to establish that mandatory resale is not in the public interest in the competitive Commercial Mobile Radio Services ("CMRS") marketplace; (2) to emphasize that differences in the operation and technology of Specialized Mobile Radio ("SMR") systems -- due, in part, to the lack of contiguous spectrum and a broadband allocation for SMRs -- require exclusion from any mandatory CMRS resale obligation; and (3) to highlight the consensus among the parties that the Commission properly concluded

^{1/} Second Notice Of Proposed Rule Making, FCC 95-149, released April 20, 1995.

that CMRS-to-CMRS interconnection and CMRS-to-CMRS roaming requirements are not necessary among CMRS providers.

II. BACKGROUND

For several years, the Commission has imposed mandatory resale obligations on cellular providers. Resale was necessary in the cellular industry since there were only two licensees per market and because one of those licensees had a regulatorily-derived head start over the other licensee. Resale not only created competition to the cellular duopoly, but also assured that the later-licensed duopolist could sell the service of its competitor until such time that both systems were constructed and operational.

The Commission now proposes to apply these same resale obligations to a CMRS market which will consist of numerous carriers, offering a variety of services to consumers at competitive prices. Those commenters agreeing with the Commission's decision to impose resale obligations on all CMRS facilities-based providers are the duopoly providers currently obligated to do so under the Commission's resale rules, i.e., cellular carriers. The fact is that resale obligations are not necessary in a competitive CMRS marketplace.

In the NPRM, the Commission recognized that some CMRS providers should not be required to resell their services because it would not be technically or economically feasible.^{2/} Nextel does not support a resale obligation for all CMRS. However, if the

^{2/} NPRM at para. 87, seeking "comment on whether resale is unreasonable, unnecessary, or technically infeasible for specific classes of CMRS providers."

Commission determines that resale is necessary in the CMRS marketplace, Nextel argues that, as an SMR provider subject to spectrum and capacity disparities vis-a-vis other CMRS competitors, it and other SMR providers should be exempt from those obligations, as discussed herein.

In the NPRM, the Commission also tentatively concluded that mandatory CMRS-to-CMRS interconnection and roaming are not appropriate in light of significant technological hurdles and the infancy of the CMRS marketplace. Commenters were in near-unanimous agreement with these conclusions, and the Commission should adopt them.

III. DISCUSSION

A. RESALE

1. Regulatory Parity Does Not Require That Resale Obligations Be Imposed On All CMRS Carriers.

Although Congress determined in the Omnibus Budget Reconciliation Act of 1993 ("Budget Act") that the Commission should establish regulatory parity for all similarly situated providers, Congress specifically recognized that not all regulations should be identical.^{3/} Because the CMRS industry will consist of numerous types of mobile service providers, the Commission has the discretion to fashion flexible rules that

^{3/} In the Budget Act, Congress required the Commission to establish "comparable" regulations. See Budget Act, Pub. L. No. 103-66, Title IV, Section 6002 (d) (3).

account for technological and operational differences among them.^{4/} As the Commission itself has recognized, "the statute does not compel the rigid application of a uniform rule but affords the Commission the discretion to fashion 'comparable' rules."^{5/}

The claims of cellular providers that the Budget Act requires the Commission to extend its cellular resale obligation to all CMRS providers fails to account for their market dominance as well as the spectral, operational and technological differences among classes of CMRS providers that justify exclusion from the obligation. The Information Technology Association of America ("ITAA"), a staunch proponent of "a liberal resale policy," recognizes that "relief from a resale obligation would be appropriate where the costs of such an obligation outweigh its perceived benefits."^{6/} "More specifically," ITAA continues, "if resale cannot, as a technical matter, be provided in certain circumstances, it might disserve the public to compel CMRS providers to develop the technical capability to provide resale at the expense of further deployment of their systems."^{7/}

^{4/} See Comments of AT&T, recognizing that the Commission is required to regulate CMRS carriers in a "similar" -- not necessarily identical -- manner. Comments of AT&T at p. 25.

^{5/} Third Report and Order, 9 FCC Rcd 7988 (1994) ("Third Report and Order"), at para. 80.

^{6/} Comments of ITAA at p. 5.

^{7/} *Id.* ITAA also argues that claims of capacity constraints, without more, do not justify exemption from the Commission's resale policies. As discussed below, the capacity and technical constraints that Nextel and other SMR providers are subject to are real, and they limit their ability to provide resale opportunities.

Incongruously, ITAA argues that limited capacity in the SMR industry creates an even greater need for resale since it will "prevent facilities-based carriers from exploiting their limited capacity at their subscribers' expense."^{8/} While this concept is supportable in a capacity-constrained market with a few providers, it fails in the expanding CMRS marketplace of numerous providers offering generally substitutable services.^{9/} With cellular, paging, SMR and Personal Communications Services ("PCS") being introduced, no one provider can possibly exploit consumers' use of their systems.^{10/} As the Western Wireless Corporation argues in its comments, the obligation is simply not required in a market with numerous competitors.^{11/}

Just as the Budget Act does not require identical regulation for all CMRS, the Communications Act of 1934 ("Communications Act") does not require all common carriers to provide resale opportunities for all-comers. Sections 201 and 202 of the Communications Act only require that common carriers make their

^{8/} *Id.*

^{9/} See Order approving the assignment of Motorola's 800 MHz SMR licenses to Nextel, DA 95-890, released April 27, 1995 at para. 18 ("... SMR service is one of many competitive wireless services striving to meet the needs of consumers who desire mobile communications."); see also Third Report and Order at paras. 22-79; and Order approving Nextel's merger with OneComm Corporation, DA 94-1087, released February 17, 1995 at para. 28.

^{10/} If ITAA is limiting its claims to the dispatch services traditionally provided only by SMR licensees, its claim is still insupportable in light of the Commission's recent decision to allow cellular and PCS licensees to provide dispatch services. See Report and Order, 10 FCC Rcd 6280 (1995).

^{11/} Comments of Western Wireless Corporation at p. 4.

services available at just and reasonable rates and on terms and conditions that are not unreasonably discriminatory.^{12/} Thus, the statute only requires that carriers offer services when it would not be unreasonable to do so. This reasonableness standard, therefore, permits the Commission to exempt certain classes of providers from the proposed resale obligation when they can show that fulfilling the obligation would be unreasonable. As Nextel will show herein, a mandatory resale obligation is unreasonable, unnecessary and technologically infeasible for SMR services.

2. As A Class, Specialized Mobile Radio Systems Have Technological and Operational Characteristics Which Require Exemption From Any Mandated Resale Obligation.

In their comments, a number of parties pointed out specific characteristics of their service which entitled them to exemption from the Commission's resale obligations. Air-to-ground service providers, for example, relied on the fact that they use different equipment from other CMRS providers, have limited capacity, and share their spectrum with other providers.^{13/}

SMR providers -- whether traditional analog operators or wide-area operators -- have unique equipment, limited capacity and operate on shared spectrum. Moreover, the SMR industry has not adopted technology standards similar to those established in the cellular industry.^{14/} The lack of standards has resulted in a number of differing, incompatible SMR technology platforms.

^{12/} See 47 U.S.C. Sections 201 and 202.

^{13/} Comments of GTE at pp. 17-10; In-Flight Phone at pp. 5-6.

^{14/} Comments of AMTA at p. 10.

Assignment of "home" and "control" channels is one example of the technological differences that was pointed out by the Personal Communications Industry Association ("PCIA") in its comments.^{15/} Because each type of equipment operates differently with regard to these channels, the SMR operator must retain tight control over the system to ensure effective operations. There is no assurance that an individual unit will be compatible with different systems. While these differing technologies have added to the competitiveness of the SMR industry by allowing consumers a wider variety of choices in dispatch equipment, the incompatibility makes SMR services unsuitable for resale by, for example, a potential PCS provider attempting to establish a market presence.

SMR equipment provides further technological hurdles to resale because traditional analog SMR units typically do not possess an individual identification number. Unlike cellular and PCS equipment, wherein each individual unit is manufactured with a separate identification number, then individually activated and billed separately, SMR units must be individually programmed for a particular system, requiring as PCIA points out in its comments, a separate identification for each and every SMR system on which the unit will be operated.^{16/} This individualized preparation makes SMR resale much more difficult than the resale of cellular services which are accompanied by equipment with factory-installed

^{15/} *Id.* at p. 16.

^{16/} Comments of PCIA at pp. 17-18.

identification codes that are compatible on any analog cellular system in the country.

Moreover, because most SMR customers are fleet dispatch users, they use the same identification code for each and every unit in their fleet and then pay a flat monthly rate for all of the units. Introducing a reseller into this scenario creates a real opportunity for fraud since the reseller could add units to a fleet without informing the operator.^{17/} Until there are capacity problems created by the additional radios, the SMR operator will not know of the units and therefore will be unable to recover their revenues.^{18/}

3. The Current SMR Spectrum Allocation And Licensing Method Inhibits SMRs' Authority To Offer Resale.

The hurdles created by the differences in and diversity of SMR equipment are further exaggerated by the relative spectrum constraints experienced by SMRs, which operate on non-contiguous channels shared by other SMR users. This limited spectrum position, coupled with the individualized unit identification process, means that SMR providers must maintain careful control and loading of their systems and cannot simply add users anywhere on the system at any time. SMR systems must be tightly managed to

^{17/} *Id.* at pp. 17-18. As PCIA further points out, a resale obligation would require that an SMR operator provide the reseller with customers' fleet identification codes, creating a potential for "pirated" units. *Id.* at 8.

^{18/} Nextel has 300,000 analog SMR units in operation -- many of which provide dispatch services only. As discussed above, mandated resale is technically impossible and economically disadvantageous on these systems.

ensure that users are not added at a time or place that will create service disruptions. For example, on Nextel's Los Angeles wide-area SMR system, prospective users must specifically designate the areas in which their units will be operating so system operators will know the approximate amount of usage at particular sites on the system. The addition of too many units at a particular site or an unnecessarily large simultaneous coverage area could cause capacity problems.^{12/}

If SMR licensees were required to make capacity available to any reseller on demand, their ability to maintain balance on their system, optimize its use, and maximize its capacity and efficiency would be undercut. Any loss in efficiency or capacity and any related inability to achieve system optimization would detrimentally impact an operator's service to the public, thereby negatively impacting the operator's bottom line. Under a mandatory resale obligation, financial and human resources that should have been dedicated to maximizing the service potential of the system would have to be diverted to accommodating system operations to meet the reseller's needs and demands rather than customers' demands. Coupled with the fact that resellers offer no additional

^{12/} It is important to contrast the spectrum position of SMRs with that of cellular carriers, which are currently obligated to offer resale. Each cellular system is licensed on 25 MHz of contiguous, exclusive-use spectrum, have specifically allocated control channels and compatible equipment, thus easing the addition and deletion of mobile units. Many traditional SMR operators operate on as few as five, ten or 20 0.25 MHz channels while wide-area SMR operators operate on less than 10 MHz of non-contiguous, non-exclusive use spectrum licensed site-by-site, and the amount of available spectrum can vary widely from site to site.

benefits in a competitive marketplace, a mandated resale obligation not only does not benefit the public, it has a detrimental impact on the public by denying SMR operators their full realm of service and competitive capabilities.

PCIA and The Southern Company correctly recognized in their comments that capacity limitations justify SMR differentiation for purposes of resale obligations.^{20/} The resale limitations created by capacity constraints result not only from the lack of capacity caused by resellers adding customers to the system without the licensee's knowledge, but also from the need to carefully manage the users currently on the system by, in most cases, limiting interconnection usage.

One commenter, the Cellular Telecommunications Industry Association ("CTIA") claims that capacity is not a factor in whether resale is feasible on a particular system, arguing that for purposes of the resale obligation, "there should be no distinction between broadband and narrowband services."^{21/} CTIA bases this argument on the fact that some narrowband services, such as "Nextel's MIRS technology and Motorola's paging message capabilities" provide services that are, to the customer, "reasonable substitutes."^{22/}

^{20/} Comments of PCIA at p. 9; The Southern Company at pp. 4, 8.

^{21/} Comments of CTIA at p. 24.

^{22/} Id.

Nextel does not dispute that its wide-area SMR services are similar to -- or the functional equivalent of -- some broadband CMRS services. The Commission has already concluded that wide-area SMRs and cellular and PCS are similarly situated services that should be regulated as CMRS and should be subject to "comparable" regulations.^{23/} CTIA's argument, however, ignores the next step in the analysis, i.e., that there are spectral, operational and technical justifications for applying differential regulation to some of these substitutable services. Capacity constraints -- particularly when coupled with non-contiguous channels, individual site licensing, and other regulatory disparities -- directly affect a provider's ability to provide capacity on demand to a third party reseller and must be considered in fashioning CMRS requirements. To argue otherwise is nonsensical and not supported by the facts.^{24/} It is this kind of situation that Congress envisioned when it concluded that CMRS providers should be regulated in a comparable, but not necessarily identical, manner.

^{23/} See Third Report and Order at p. 7996.

^{24/} Even the cellular licensee, Bellsouth, argues that the resale obligation should be limited to broadband CMRS providers. Bellsouth, however, goes on to designate SMRs as broadband along with cellular and PCS services. An SMR licensee does not operate on contiguous spectrum. On the contrary, SMR licensees provide service on slivers of spectrum, operating on 0.25 kHz non-contiguous channels. It is disingenuous to claim that such an SMR allocation results in broadband services in light of the 25-30 MHz of contiguous, exclusive-use spectrum on which cellular and PCS providers operate. Apparently, Bellsouth and other cellular carriers view narrowband SMR providers as potential competition and are therefore simply striving to inundate this competition with unreasonable cost and capacity constraints.

4. Nextel's Wide-Area Systems Present Additional Technological Complications To Offering Resale Opportunities.

Nextel's wide-area SMR services require particularly careful planning and control of system operations. To construct and implement its wide-area SMR enhanced services, Nextel is reconfiguring less efficient high-power, high-site analog systems into low-power, frequency reuse digital systems. The customers currently using Nextel's analog SMR services must be migrated to the new digital systems once they are operational. Nextel must also manage the addition of new customers to the digital system, while migrating existing customers from the analog system. Because wide-area SMR licensing results in licensees having a different number of channels at each site, capacity on the Nextel system can vary significantly from site to site, thus requiring that Nextel closely monitor and manage the addition and migration of customers on its system.

Thus, despite the claims of PCIA that wide-area SMRs might be better suited for resale obligations than traditional SMRs,^{25/} Nextel's systems are far from being technologically ready to offer resale. Nextel is in the process of building high-capacity mobile communications systems for workgroups, but it is not there now. On the contrary, Nextel is in the early stages of initiating wide-area SMR service in a number of markets. In its initial stages, a critical implementation factor involves an ongoing transfer of frequencies from traditional, analog SMRs to wide-area SMR systems

^{25/} Comments of PCIA at p. 16, fn. 36.

and the concomitant dynamic management of customer loading from systems losing capacity to the new systems.

This is not a simple task. For example, while Nextel might free up enough spectrum to initiate wide-area service in a given market, it may have to postpone adding capacity until existing analog customers can be migrated to a combination of other analog systems, the wide-area system and even competitors. It would be impossible to comply with a mandatory resale obligation in these circumstances without dislocating existing Nextel customers and compromising the managed growth of the wide-area system. Further, this capacity management is essential to the technical optimization of each and every market. Mandatory resale would result in reduced service quality, blocking and system busies.^{26/}

Nextel and other new wide-area SMRs have their hands full migrating spectrum and customers, introducing new technology and managing the implementation of new wide-area systems on non-contiguous spectrum. They must do this to become competitive in the CMRS marketplace and are doing so under continuing regulatory disparities in licensing, spectrum access and operational flexibility. Until wide-area SMRs achieve regulatory parity with competing cellular and PCS providers in terms of spectrum access, licensing (including geographic-area licensing, contiguous spectrum, and mandatory retuning), operational flexibility, and the

^{26/} In no way is Nextel saying that it would not would offer nondiscriminatory resale in circumstances where it makes good business sense and is technically possible given the development of its wide-area systems. This will be a case-by-case decision, however, for the foreseeable future.

ability to deploy more efficient technologies, mandated resale will be technologically unreasonable.

The Commission has recognized that the cellular duopoly has market dominance.^{27/} Forcing a resale obligation -- that was intended to create competition in a duopoly market -- on SMRs at this time would unreasonably and unnecessarily burden them while providing no corresponding competitive benefits. Such a result is inapposite to the robust competition among diverse CMRS providers that the Commission is attempting to foster through an expanded resale obligation.^{28/}

5. As A New Entrant, Motal's Wide-Area SMR Services Would Be Handicapped By A Resale Obligation.

As American Personal Communications ("APC") argues in its comments, new entrants are intent on getting their systems up and running and thereby obtaining a place in the market.^{29/} To require new entrants to resell their services as they are just getting off the ground will take away their ability to control the development of their systems, which, as explained above, is imperative to their effective implementation.

^{27/} The Commission has previously classified the duopoly cellular carriers as dominant carriers and has found that the cellular market is not competitive at this time. See Second Report and Order, 9 FCC Rcd 1411 (1994) at paras. 138, 139, and 145.

^{28/} At the time the Commission achieves regulatory parity for SMRs, e.g., a contiguous block of exclusive-use channels, operational flexibility, and the migration necessary to create contiguous spectrum is completed and implemented, it may be appropriate for the Commission to revisit the issue of mandatory resale obligations.

^{29/} Comments of APC at p. 9.

Not only is application of the resale requirement to new entrants unworkable, it also is inconsistent with the Commission's initial justification for applying resale obligations to the cellular industry: to assist new entrants in gaining a foothold in the market. The ability to resell another's service was an opportunity for new entrants, not yet up and operating, to resell another's service under their own brand name and thereby develop a presence in the market while their system was still under construction. To impose these burdens on new entrants while their systems are still being constructed and fine-tuned only makes that implementation process more difficult, potentially delaying services to the public, undercutting their efforts to establish a viable competitive, long-term presence in the market.

The only apparent beneficiaries of mandated resale requirements are those new entrants who are furiously moving ahead with their plans to do nothing more than resell the services of companies who have made hundreds of millions of dollars of investment to offer new, enhanced services to the public. These investments create jobs, add to the nation's state-of-the-art telecommunications infrastructure, and -- via auctions -- create revenues for the U.S. Treasury. On the contrary, resellers such as MCI and Time Warner chose to forego the investment and, instead, seek a Commission-guaranteed resale requirement that is unnecessary in a competitive market, and that offers no additional competitive benefits to the public. However, the obligation does assure MCI, Time Warner, and other resellers their place in the market via

regulatory fiat rather than capital investment; but, this assurance comes at a very high cost to the public and the telecommunications industry since the resellers' "free" use of others' systems and capacity will result in a devaluation of the spectrum and a lack of incentive for system development and deployment.

If the Commission disagrees and requires resale for all CMRS providers and does not exempt SMRs, Nextel strongly supports the comments of the National Telephone Cooperative Association ("NTCA") that any resale obligation must include the same "reasonableness test" that a carrier would apply in deciding whether or not to sell service to any other customer.^{30/} As NTCA states in its comments, a mandatory resale obligation should not require facilities-based carriers to treat potential resellers differently than any other large prospective customer, thus allowing the carrier to consider "capacity limitations, cost recovery risk of new investment, risk of continued service utilization by a reseller, and imposition of other terms and conditions often applied to extraordinary volume customers" in determining whether to enter into a resale agreement.^{31/}

^{30/} Comments of NTCA at p. 5. Further, should the Commission nonetheless determine that Nextel's services are not exempt from the resale obligation, Nextel -- as a reclassified CMRS provider -- should not be obligated to offer resale until the end of the transition period, August 10, 1996.

^{31/} *Id.* This is the same position advanced by Vanguard Cellular that, in the event the Commission imposes a resale obligation, it should not include an obligation to expend resources on system expansions simply to meet the demands of a reseller. See Comments of Vanguard at p. 11. Although Vanguard limits its discussion to resale obligations on cellular providers, Nextel argues that such a limitation would apply to the resale obligations

Moreover, to avoid differing regulations from state to state, the Commission must preempt any "other terms and conditions" regarding resale that are imposed by state regulators. Nationwide providers, such as Nextel, cannot be expected to comply with up to 50 different resale policies. Therefore, to the extent that a state imposes a contradictory resale policy, the Commission should preempt it.

6. Mandatory Switch-Based Resale Is Not In The Public Interest.

The competition in the CMRS marketplace not only justifies the elimination of resale mandates on all CMRS, but -- as the Commission recognized in the NPRM and nearly every commenter agreed -- it also means that there is no justification for imposing switch-based resale obligations.^{32/} In a competitive market, a switch-based resale obligation provides no competitive benefits. On the contrary, it does nothing more than provide an opportunity for parties to avoid significant system and spectrum investments by simply using the capacity of those who chose to take the risks and make the required investment. These resellers add nothing to the industry, offer no new infrastructure to the industry, and in an era of competitive bidding, provide the public trust nothing in return for the use of the spectrum.

imposed on any CMRS provider, including SMRs.

^{32/} See, e.g., Comments of AT&T at p. 28; Bellsouth at p. 10; CTIA at 27; Comcast Cellular Communications, Inc. at p. 28; GTE at p. 24; New Par at p. 24; NYNEX at p. 8; Pacific Telesis at p. 10; PCS PrimeCo at p. 10; Rural Cellular Coalition at p. 8; Southwestern Bell at p. 22; Sprint at p. 11; and Vanguard Cellular at p. 13.

Not only does switch-based resale offer no benefits to the public, it may actually have detrimental impacts on wireless telecommunications users. For example, it could hinder future development of new technologies since any change in a system's technology will have to account for the reseller's switch, requiring the reseller's agreement to upgrade as well. A refusal to upgrade could result in significant system disruptions and an inability to offer high-quality services. Thus, in light of these detrimental effects and the lack of any corresponding benefits, the Commission has correctly concluded that switch-based resale is not in the public interest.

B. CMRS-TO-CMRS INTERCONNECTION AND ROAMING

1. **A Majority Of The Commenters Agree With The Commission's Conclusions That Direct Interconnection And Roaming Should Not Be Mandated At This Time.**

Nearly every party submitting comments herein agreed with the Commission that direct CMRS-to-CMRS interconnection should not be mandated at this time.^{31/} Given the infant state of the new CMRS industry, it is simply too early to determine exactly who the players will be, what services they will be providing, and on what technology those services will be provided. This makes it nearly impossible to specify CMRS-to-CMRS interconnection requirements at this time.

^{31/} See, e.g., Comments of Airtouch at p. 2; Alltel Mobile Communications ("Alltel") at p. 1; Frontier Cellular at p. 3; Geotek Communications ("Geotek") at p. 2; GTE at p. 4; Horizon Cellular ("Horizon") at p. 2; and PCIA at p. 4.

Moreover, as several parties agreed, carriers will have the incentive to directly interconnect when it becomes economically beneficial to do so.^{34/} Should a carrier nonetheless find some motivation for not fulfilling an interconnection request, the Commission and numerous parties recognize that the Communications Act of 1934 will ensure that the interconnection is made if the request is reasonable.^{35/} With that assurance, the Commission should not impose any mandatory obligations and should likewise preempt any state-mandated CMRS-to-CMRS interconnection requirements.

With regard to the Commission's tentative conclusion that roaming requirements should not be mandated at this time, the commenters likewise showed significant support for the Commission's decision.^{36/} The number of differing technologies that will be employed by CMRS providers will make roaming a significant technological challenge. Therefore, the Commission has correctly concluded that the industry should arrive at technological solutions given the demand for and necessity of roaming in today's competitive wireless telecommunications industry.

^{34/} See, e.g., Comments of Airtouch at p. 6; Alltel at p. 2.

^{35/} See, e.g., Comments of Airtouch at p. 2; Alltel at p. 2; GTE at p. 10; and The Southern Company at p. 11.

^{36/} See, e.g., Comments of Airtouch at p. 10; Alltel at pp. 1-2; Frontier at p. 5; GTE at p. 12; and PCIA at p. 7.

IV. CONCLUSION

The Commission should not impose resale obligations on the competitive CMRS marketplace. Given the number of providers and the array of services that will be offered to the public, resale is not necessary to ensure the existence of a competitive market.

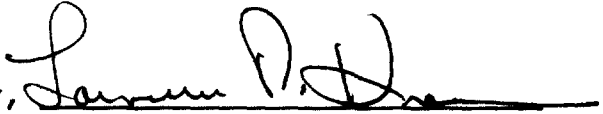
Should the Commission nonetheless decide to keep the resale obligation on cellular and extend it to other CMRS providers, the Commission should recognize the substantial technological and operational differences between SMRs -- both wide-area and local -- and other CMRS providers that justify an exemption from the resale obligation. Differences in equipment, spectrum and capacity limitations, and shared spectrum make resale on an SMR system technologically infeasible and economically unreasonable. Congress intended that all CMRS be regulated similarly, but it also recognized that there would be technological and operational differences, such as those discussed herein, that justify differential regulation.

The Commission received significant support for its conclusions that direct CMRS-to-CMRS interconnection and roaming should not be mandated at this time. Nextel likewise supports the

conclusions and asks the Commission to refrain from imposing such mandatory obligations.

Respectfully submitted,

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